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STATE OF NEW JERSEY NEW JERSEY BOARD OF
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
BOARD OF CHIROPRACTIC EXAMINERS

IN THE MATTER OF THE)	
SUSPENSION OR REVOCATION OF)	
THE LICENSE OF)	Administrative Action
)	
ALAN L. MARCUS, D.C.)	ORDER
License No. MC1604)	
)	
TO PRACTICE CHIROPRACTIC)	
IN THE STATE OF NEW JERSEY)	
_____)	

This matter was initially opened to the State Board of Chiropractic Examiners on December 22, 1998, on the Attorney General's filing of an Order to Show Cause and Verified Complaint seeking the suspension or revocation of the license of respondent Alan L. Marcus, D.C., along with other relief. The Order to Show Cause and Verified Complaint were filed as a result of the arrest of respondent, on or about December 16, 1998, and his indictment by a Passaic County grand jury on two counts of criminal sexual contact with patients in violation of N.J.S. 2C:14-2c(1) and four counts of criminal sexual contact with patients in violation of N.J.S. 2C:14-3b. By Consent Order dated December 24, 1998, respondent and his counsel, Theodore Daunno, Esq., agreed to a voluntary temporary suspension of respondent's license pending a full hearing scheduled for January 14, 1999. On the date of the hearing, respondent and counsel entered into another Consent Order,

in which respondent agreed to voluntarily surrender his license to practice chiropractic in the State of New Jersey pending resolution of the criminal charges filed against him.

On August 10, 2000, respondent, by his new attorney, Kalman Harris Geist, Esq., filed an application seeking to "resume the practice of chiropractic medicine under reasonable conditions," such as the use of a proctor or restriction of his practice to male patients only. In a three-page certification submitted in support of his motion, respondent claims that he is experiencing severe financial hardship as a result of the suspension. He alleges he is unable to obtain other employment because of the pending criminal charges, and that prior to the suspension, the practice of chiropractic had been his sole means of earning a living for over twenty years. Moreover, respondent claims that no trial date has been set for resolution of the criminal charges, even after more than eighteen months. Respondent concludes his certification by requesting, as an alternative to being permitted to practice chiropractic, "the hearing to which [respondent] was entitled." Presumably, respondent is referring to the temporary suspension hearing that was avoided by his entry into the Consent Order of January 14, 1999.

The Attorney General, by Paul R. Kenny, Deputy Attorney General, responded to the application by asserting that respondent knowingly and willingly entered into the Consent Order which

suspended his license. The respondent received the benefit of advice of counsel and he knew that the suspension would continue until the resolution of the criminal charges filed against him. The respondent chose to enter into the Consent Order rather than proceed to a hearing and risk the consequences of the hearing; the Attorney General asserts that respondent should not be relieved of his bargain. Further, the Attorney General has argued that the Verified Complaint and the indictment contain serious allegations of sexual assault committed during respondent's treatment of patients. These allegations raise serious concerns for the public health, safety and welfare if respondent is permitted to return to practice. The Attorney General contends that respondent's behavior demonstrates a lack of respect for his patients and the chiropractic profession as well as lack of self control; any practice of chiropractic by respondent would present a clear and imminent danger to the public.

The Attorney General submitted a supplemental certification with a letter from the Passaic County Prosecutor's Office which indicated that pre-trial hearings in the criminal matter had commenced in May 2000, and would likely be completed within ninety days. The certification does not address the issue of an ultimate trial date for respondent's criminal matter, but does indicate that the criminal matter is proceeding.

The Board has considered the application of respondent to resume the practice of chiropractic and thereby modify the restraints imposed in the Consent Order of January 14, 1999. It has reviewed respondent's certification, the sole document submitted in support of his application and the Attorney General's written submissions in response to the motion. Moreover, the Board has reviewed the Verified Complaint, which reflects allegations that respondent has engaged in gross and repeated acts of malpractice, negligence or incompetence and professional misconduct.

Having completed that review, the Board has determined that the restraints set forth in the January 14, 1999 Consent Order should remain in place, and that no hearing is warranted at this time.

Respondent has provided little basis for his application to return to practice. His primary argument is that his suspension has continued for longer than he anticipated because the criminal proceedings have not yet been resolved. The Board appreciates respondent's frustration with the ongoing suspension as well as his difficulties in obtaining other employment due to the nature of the criminal charges against him. However, the Consent Order of January 14, 1999 was entered into with the knowledge and consent of all parties. The Verified Complaint filed by the Attorney General raises serious allegations of sexual misconduct, including specific

allegations of sexual assault of patients during chiropractic treatment. The Board believed then, and still believes now, that the allegations are serious enough to warrant the continuing suspension of respondent's ability to practice chiropractic pending resolution of the criminal charges against him. Respondent's suggestion that he be allowed to practice using a proctor or limit his practice to male patients does not obviate the allegations of underlying serious sexual misconduct set forth in the Verified Complaint.

Similarly, respondent provides no basis for his alternative request for the "hearing to which [he] was entitled." The Consent Order was entered so that respondent would avoid the consequences of a full hearing on a temporary suspension. Respondent presents no evidence that would warrant the Board's setting aside the Consent Order to hold a full hearing on the merits of a temporary suspension.

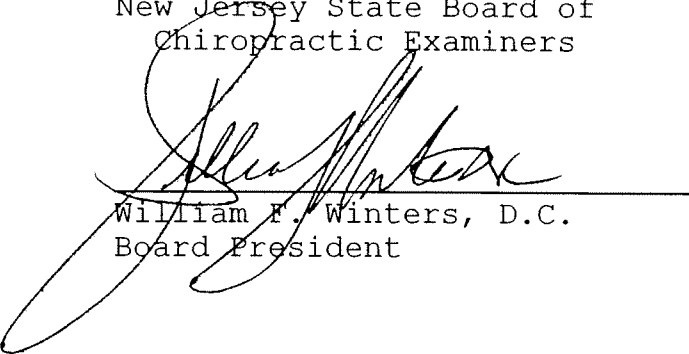
The Board's acceptance of the Consent Order in January 1999 was based on its assessment that the terms of the order would protect the public interest pending resolution of the criminal charges. Respondent's allegations of financial hardship do not outweigh the need for continued protection of the public as effectuated through respondent's continued suspension from the practice of chiropractic.

Therefore,

IT IS ON THIS 18 DAY OF OCTOBER, 2000,

ORDERED that all terms and conditions as agreed and ordered in the Consent Order of January 14, 1999, shall remain in effect pending resolution of the criminal charges against respondent and further order of this Board.

New Jersey State Board of
Chiropractic Examiners



William F. Winters, D.C.
Board President